

**FINAL REPORT  
OF THE  
INTERIM STUDY COMMITTEE ON  
CIVIL AND FAMILY LAW ISSUES**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**November, 2001**

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# INTERIM STUDY COMMITTEE ON CIVIL AND FAMILY LAW ISSUES

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Andrew Hedges  
Attorney for the Committee

Andrew Roesener  
Attorney for the Committee

Mark Goodpaster  
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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

## **I. LEGISLATIVE COUNCIL DIRECTIVE**

The Legislative Council directed the Committee to do the following:

- A. Study whether Indiana should adopt the Uniform Parentage Act (SR 5);
- B. Study what effect family law has on marriage (SCR 93);
- C. Study the issue of civil immunity for volunteers (HR 100);
- D. Study the issue of juvenile waivers and tiered corrections; and
- E. Study implementation problems with "Zachary's Law" (IC 5-2-12).

## **II. INTRODUCTION AND REASONS FOR STUDY**

See Section I.

## **III. SUMMARY OF WORK PROGRAM**

The Committee met four times during the 2001 interim.

The first meeting was held at the Kokomo City Hall, in Kokomo, Indiana, on August 29, 2001. Topics of discussion were: (1) juvenile waiver and tiered corrections; and (2) Zachary's law.

The second meeting was held at the Kokomo City Hall, in Kokomo, Indiana, on September 18, 2001. Topics of discussion were: (1) tiered corrections; and (2) family law as it applies to marriage.

The third meeting was held at the State House on October 3, 2001. Topics of discussion were: (1) civil immunity for volunteers; (2) the Uniform Parentage Act; and (3) tiered corrections.

The fourth meeting was held at the State House on October 24, 2001. The purpose of the meeting was to consider the final report.

## **IV. SUMMARY OF TESTIMONY**

### ***Juvenile waiver and tiered corrections***

The committee heard testimony from witnesses involved in the juvenile justice system. The juvenile justice system is hampered by a lack of flexibility with respect to: (1) which juvenile offenders enter the juvenile system; (2) the options available to a juvenile court judge who must balance the goal of rehabilitation with the duty to protect society from dangerous individuals; and (3) treatment programs available to juvenile offenders who are already in the juvenile system.

1. *Which juvenile offenders.* Mandatory waiver of juveniles to adult court means that many juveniles who would benefit from juvenile programs do not receive them because they are in adult court. Studies from other states suggest that juvenile offenders who enter the adult system have a higher recidivism rate than juveniles who are treated within the juvenile system. To address this problem, mandatory waiver should be either eliminated, or at least limited to the most serious offenders. Indiana's requirement that juveniles who have once been waived to adult court will afterwards always be waived to adult court (the "once waived, always waived" rule) should also be eliminated.

2. *Tiered system.* Other states have had success with a tiered or "blended" sentencing scheme for juveniles that gives juvenile court judges the flexibility to impose a blend of juvenile and adult sanctions on youthful offenders. These programs typically permit a judge to suspend the adult portion of the sentence on the condition that the juvenile offender successfully complete treatment or rehabilitation programs. It is important that the juvenile system have adequate programs available to treat juvenile offenders. Some states with a tiered system and numerous juvenile programs have enjoyed substantially reduced recidivism rates.

3. *Treatment programs.* Juvenile offenders in Indiana need more and better treatment programs because these programs are the most important component of rehabilitation. Juvenile participants in Howard County's intensive probation program have a low recidivism rate. Other states with low juvenile recidivism rates have both a tiered corrections system and ample treatment programs available. The department of correction has a relatively new Youth Incarcerated as Adults (YIA) program for juveniles who have received adult sentences. Some witnesses believed that the YIA program could be improved.

### Zachary's Law

The committee received information that Indiana has over 12,000 individuals on its sex and violent offender registry. However, it is difficult to ensure that the offenders' addresses in the registry are accurate. Some other states with sex offender registries make a photograph of the offender available over the Internet. Many states also include other information in the registry, such as a map showing the location of the offender's residence. This makes it easier for concerned citizens to recognize sex offenders.

### Family law as it applies to marriage

The committee heard testimony and received studies showing that married individuals are happier, healthier, and financially more secure than non-married individuals. The committee also heard testimony concerning a recent study of couples on the brink of divorce; according to the study, couples who actually divorced were significantly less happy than couples who decided against divorce and stayed together. Because this evidence suggests that marriage is a public health issue, Indiana should adopt laws that increase the chances of couples staying married. One option Indiana should consider is a "covenant marriage" law: couples who choose to have a covenant marriage cannot get divorced as easily as couples with a conventional marriage. Another option is to lengthen the waiting period for a divorce to become final in certain circumstances: this would be good because there are therapy programs that can help mend broken marriages, but they will not work in the 60 days required to obtain a divorce in Indiana.

#### Civil immunity for volunteers

A description of the federal Volunteer Protection Act of 1997 was provided to the committee. This is a federal law that provides immunity to individuals against certain civil suits based on actions the individual may have performed while volunteering.

Witnesses disagreed on the benefit of the Volunteer Protection Act. The committee heard testimony that Indiana has numerous volunteers who should be protected by an Indiana statute as well as the federal statute. The committee also heard testimony that Indiana should opt out of the Volunteer Protection Act because the act is constitutionally dubious, ill-considered, and, to some extent, duplicative of immunities Indiana already provides.

#### Uniform Parentage Act

The Uniform Parentage Act (UPA) is a comprehensive law that addresses issues related to parentage, such as surrogate parentage ("gestational agreements") and paternity. While the UPA does fix certain shortcomings in Indiana law, such as interstate child support when paternity has not been established, the main benefit of the UPA is that it promises to bring uniformity to all state laws dealing with parentage.

### **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee made the following findings of fact: NONE

The Committee made the following recommendations:

#### **Juvenile waiver and tiered correction.**

The committee recommended creating a commission on juvenile law, made up of juvenile judges

and other experts in juvenile law, to recommend changes in the juvenile law by the 2003 legislative session.

**Zachary's law.**

The committee recommended the passage of **PD 3186**. PD 3186 requires the sex offender registry to include photos and addresses of sex offenders.

**Family law as it applies to marriage.**

The committee recommended the passage of legislation that would increase the waiting period for a divorce to 120 days in some circumstances.

**Civil immunity for volunteers .**

The committee recommended the passage of a bill to amend the definition of "nonparty" as follows:

"Nonparty", for purposes of IC [34-51-2](#), means a person who caused or contributed to cause the alleged injury, death, or damage to property, **and who is or may be liable to the claimant in part or in whole for the damages claimed**, but who has not been joined in the action as a defendant.

## WITNESS LIST

Kris Campbell, Children's Advocacy and Prevention Service  
Micah Clark, Executive Director of the Indiana Family Institute  
Judge Steve David, Boone County Circuit Court  
Joseph Duray, Military/Veterans Coalition of Indiana  
Laurie Elliott, Staff Atty, ISBA Committee on the Civil Rights of Children  
Peter Hahn, Defense Atty. and Member of ISBA Comm. on the Civil Rights of Children  
JauNae Hanger, Vice Chair of ISBA Comm. on the Civil Rights of Children  
Robert Hellmann, Indiana Trial Lawyer Association  
Larry Hembree, Liberty Behavioral Corp.  
Harold Henneke, Military/Veterans Coalition of Indiana  
Stan Huseland, Military/Veterans Coalition of Indiana  
Randy Koester, Attorney, Department of Correction  
Susan Maxson  
John McCabe, Nat. Conf. of Comm'rs of Uniform State Laws  
Judge Lynn Murray, Howard County Circuit Court  
Catherine O'Connor, Executive Director of the Criminal Justice Institute  
Judge James Payne, Marion County Juvenile Court